

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: BABY FOOD PRODUCTS LIABILITY
LITIGATION

This Document Relates to:
ALL ACTIONS

Case No. 24-md-3101-JSC

MDL 3101

Hon. Jacqueline Scott Corley

**JOINT STATEMENT FOR JANUARY 23,
2025 CASE MANAGEMENT
CONFERENCE**

Date: January 23, 2025

Time: 8:00 a.m. PT

Location: Courtroom 8

19th Floor 450 Golden Gate Ave.
San Francisco, CA 94102

1 Plaintiffs and Defendants¹ respectfully submit this Case Management Conference Statement
2 in advance of the January 23, 2025 Case Management Conference.

3 **I. PLEADING ISSUES**

4 **A. Short Form Complaints and Rule 12 Motions**

5 At the last status conference, Defendants raised the possibility of filing a motion under
6 Federal Rule of Civil Procedure 12(b) raising lack of standing with regard to an exemplar
7 complaint included in this MDL. Following a meet and confer discussion, the parties have agreed
8 that this issue is best addressed in connection with the short form complaint, which the parties are
9 negotiating. The parties intend to submit a draft short form complaint and proposed pretrial order
10 approving a short form complaint (or competing proposals relating to the same) in advance of the
11 February CMC. If this process does not resolve Defendants' concerns, Defendants will raise those
12 concerns in connection with the next CMC.

13 **B. Watkins Amended Complaint**

14 On January 6, 2025, Plaintiffs filed an amended complaint in the *Watkins* case. Following
15 a meet and confer discussion, Plaintiffs moved to strike the amended complaint and filed a second
16 amended complaint.

17 Given the recent refile of the Third Amended Petition and Motion to Strike, Amazon and
18 Whole Foods lack clarity as to whether the Court will permit the Amended Third Amended
19 Petition; which version of the Third Amended Petition is the current, operative complaint in
20 *Watkins*; and whether any opposition briefing is due on original January 24, 2025 deadline
21 (pursuant to the stipulated Order on the briefing schedule, Dkt. 299) or pursuant to the new
22 Amended Third Amended Petition.

23 If the Court grants leave for Plaintiff Watkins to file the Amended Third Amended Petition
24 (which Amazon and Whole Foods do not oppose), Amazon and Whole Foods request that any
25 response to the Amended Third Amended Petition be reset by the January 15, 2025 filing deadline,
26

27 ¹ As used herein, "Defendants" does not include any defendant who is challenging jurisdiction.
28

to be due February 5, 2025 (21 days after the refiled petition).

II. DISCOVERY ISSUES

A. PTO 11 Update

PTO 11 required Defendants to “identify for Plaintiffs, prior to January 20, 2025, and in an admissible format, the products that correspond to the test results attached as Exhibits E through N of Docket No. 307” and required Plaintiffs to “attempt to quantify the total number of ambiguous test results.” The Parties will be prepared to discuss compliance with PTO 11. Additionally, the Court asked the parties to be prepared to discuss the issue of product identifiers further at the January 23, 2025 CMC, and the parties are prepared to do so.

B. Joint Letter Briefs

The parties have submitted to the Court letter briefs addressing two additional issues and will be prepared to discuss their positions at the January 23, 2025 CMC: (1) Plaintiff Fact Sheets; and (2) Plaintiffs’ request for jurisdictional discovery from Nestle, S.A. and Gerber.

C. 30(b)(6) Depositions

On December 19, 2024, Plaintiffs served each Defendant, including those challenging jurisdiction, with a notice of deposition under Federal Rule of Civil Procedure 30(b)(6). Plaintiffs have agreed to briefly continue those depositions to allow the parties time to resolve objections or to raise them with the Court.

D. Walmart Third Party Subpoenas

Plaintiffs served several third-party subpoenas and will provide an update to the Court.

E. Retailer Disclosures

PTO 10 required Plaintiffs to produce, by December 26, 2024, “any loyalty program information currently in their possession, custody, or control.” Although this information will be the subject of upcoming Plaintiff’s Disclosure Form / Fact Sheet, this early production covered what was readily available for production on a rolling basis. On December 26, 2024, Defendants received certain information from seven Plaintiffs’ law firms. Although Defendants have advised Plaintiffs’ Counsel that loyalty program information has not been provided for all Plaintiffs, pursuant to PTO 10, Plaintiffs’ Counsel represent that the information provided on December 26, 2024, constitutes

1 all of the loyalty information currently in each Plaintiff's counsel's possession, custody, or control,
2 and it will be supplemented on a rolling basis either through informal disclosures or, ideally, through
3 the Plaintiffs' Disclosure / Fact Sheet process, which is the subject of a letter brief (noted above).

4 The Parties are continuing to meet and confer on PTO 10, including the presence of
5 redactions in the information provided, and will be prepared to provide an update to the Court.

6 **III. SCIENCE DAY**

7 Plaintiffs would like to discuss having a Science Day with the MDL Court—an idea that
8 was originally proposed by Defendants at the first CMC. Plaintiffs anticipate that this would
9 include attorney presentations about the science in this case, with each side getting a total of 90
10 minutes. Plaintiffs would present for 75 minutes, Defendants would present for 90 minutes, and
11 Plaintiffs would finish with 15 minutes. Plaintiffs propose proceeding with this Science Day on
12 the day of the March CMC hearing on March 27, 2025. There are many complex scientific issues
13 in this case. Providing an orientation on those issues—before the tedium and advocacy that
14 necessarily accompanies *Daubert* motions overtakes the MDL—would be helpful.

15 At this stage of the MDL, with general causation discovery well underway and a schedule
16 in place for those proceedings, Defendants do not believe a Science Day is necessary or feasible.
17 The Court has front-loaded the issue of general causation and has set aside a week in December to
18 hear Rule 702 motions, including presentation of expert testimony, if warranted. That presentation,
19 along with the voluminous briefs submitted ahead of it, will provide the Court with ample
20 information on the scientific matters at issue in the MDL. Having a separate science day (consisting
21 of attorney-only presentations) at the end of March, after the completion of most general causation
22 fact discovery and just weeks before disclosure of Plaintiffs' experts' opinions, is not likely to be
23 useful or to aid the Court in deciding any issues that will be before it.

24
25 Dated: January 21, 2025

Respectfully submitted,

26 WAGSTAFF LAW FIRM

27 By: /s/ Aimee H. Wagstaff

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Dated: January 21, 2025

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Defendants' Liaison Counsel

ATTESTATION OF CONCURRENCE IN FILING

In accordance with Northern District of California Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from each of the signatories who are listed on the signature page.

Dated: January 21, 2025

/s/ Aimee H. Wagstaff
Aimee H. Wagstaff

CERTIFICATE OF SERVICE

I certify that on January 21, 2025, I electronically filed the foregoing Joint Statement with the Clerk of the Court using the ECF system, which sent notification of such filing to all counsel of record.

/s/ Aimee H. Wagstaff

Aimee H. Wagstaff